

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

FREDDIE RICHARD JONES,)
Petitioner,)
vs.) Case No. 0:14-cv-01760-TLW
DENNIS BUSH, Warden, Lee)
Correctional Institution,)
Respondent.)
_____)

ORDER

Petitioner Freddie Richard Jones, an inmate at McCormick Correctional Institution, filed this pro se habeas petition pursuant to 28 U.S.C. § 2254 on May 1, 2014. (Doc. #1). Respondent filed a motion for summary judgment on September 22, 2014. (Doc. #22). Petitioner failed to respond to the motion by the October 27, 2014 deadline. On October 28, 2014, United States Magistrate Judge Paige J. Gossett, to whom this case was assigned pursuant to 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2), (D.S.C.), issued an Order directing Petitioner to advise the Court whether he wished to continue with his case and to respond to Respondent's summary judgment motion by November 11, 2014. (Doc. #27). Petitioner again failed to respond to the motion.

This matter is now before the Court for review of the Magistrate Judge's Report and Recommendation ("the Report"), issued on November 14, 2014. In the Report, the Magistrate Judge recommends that this Court dismiss the petition with prejudice for failure to prosecute. (Doc. #31). On November 17, 2014, Petitioner filed a motion for an extension, requesting additional time to file a response to the summary judgment motion. (Doc. #33). The Court

granted the motion on November 18, 2014, allowing Petitioner an additional thirty days to file his response. (Doc. #34). On December 19, 2014, Petitioner filed a response in opposition to Respondent's summary judgment motion. (Doc. #39).

In conducting its review of the Report, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted). The Magistrate Judge carefully analyzed this case based on the record as it existed at the time. However, because Petitioner has now filed a response to the motion for summary judgment, the Court declines to dismiss his petition for failure to prosecute. After careful deliberation, the Court remands this action to the Magistrate Judge for consideration of Respondent's motion for summary judgment on the merits and for issuance of a new report and recommendation.

Accordingly, it is hereby **ORDERED** that this action is **REMANDED** to the Magistrate Judge for consideration of Respondent's motion for summary judgment.

IT IS SO ORDERED.

s/ Terry L. Wooten

Terry L. Wooten
Chief United States District Judge

December 23, 2014
Columbia, South Carolina